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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,775	10/15/2001	Dianne D. Mueller	US20010143	3779

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WHIRLPOOL PATENTS COMPANY - MD 0750
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ST. JOSEPH, MI 49085

EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/977,775	Applicant(s) MUELLER ET AL.	
	Examiner Ljiljana (Lil) V. Ciric	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) 12, 13 and 21-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the replies filed on December 22, 2004.
2. Claims 1 through 26 remain in the application. Claims 11 and 12 have been amended.
3. The previous Office action was a non-final action.

Response to Arguments

4. Applicant's arguments filed on December 22, 2004 have been fully considered but they are not persuasive.

As a preface to the following traversal of applicant's arguments, the examiner hereby notes that the claims in a pending application should be given their *broadest* reasonable interpretation. See In re Pearson, 181 USPQ 641 (CCPA 1974).

For example, applicant argues that the refrigeration system of Clark et al. is NOT in the form of a module. In response, the examiner notes that, at least broadly interpreted as required, a module is no more than an interchangeable system component or unit. Clark et al. clearly discloses and claims a refrigeration unit 70 disposed in and mounted within a drawer 68 [see column 4, lines 10-13]. That refrigeration unit or module 70 may be divisible into sub-units or sub-modules does not preclude the refrigeration unit as being viewed as a module or unit.

In response to applicant's argument that the reference fails to show the compressor, the evaporator, and the condenser being all mounted on a base to form a module that fits entirely within the refrigeration chamber for easy installation and

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maintenance, applicant is again respectfully referred to column 4, lines 10-13, and to Figure 2 of Clark et al., as above.

In response to applicant's argument that the air within the evaporator housing 78 is not insulative, the examiner states that, at the very least when the inventive apparatus of Clark et al. is not in operation, the evaporator housing 78 maintains a layer of standing air around the evaporator, such standing air being inherently insulative. It is thus respectfully noted that applicant's arguments fail to give sufficiently broad consideration of either the instant claims or the disclosure of the Clark et al. reference.

It is furthermore noted that applicant's disclosure fails to disclose any specifics relating to the materials from which the insulative evaporator walls are made nor to place any criticality on the same. Hence, absent any criteria having been set forth by applicant's disclosure as to what constitutes sufficient insulation or sufficient heat conduction, one may further argue that ALL materials (including air) are insulative to at least some degree as well as that ALL materials are conductive to at least some degree because no material is either 100% insulative or 100% conductive. Thus, applicant's arguments relating to the Clark et al. reference failing to show a thermally conductive material for the base are similarly unpersuasive.

In response to applicant's arguments relating to shifting the location of parts BEING inventive, the examiner notes that the corresponding rejection as cited in the previous Office action set forth specific technical reasons why shifting the location of the inlets and outlets would have been obvious to the average designer, for example.

Applicant has furthermore failed to provide any rationale or evidence ascertaining either

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unexpected results or criticality associated with the inlet/outlet locations as claimed in the instant application.

Applicant's arguments generally fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments also generally do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

An exception is that applicant's arguments with regard to claim 12 are persuasive. Thus, claims 12 and 13 are hereby deemed as containing allowable subject matter.

The examiner is providing a prior art reference as documentary evidence in support of the Official Notice previously taken with regard to insulation within oven and/or refrigerator walls and housings.

Claim Rejections - 35 U.S.C. § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1 through 4 and 16 through 20, are rejected under 35 U.S.C. 102(e) as being anticipated by *Clark et al. (of record)*.

Clark et al. discloses a combination cooling and cooking appliance 20 essentially as claimed, including, for example, a door 48 movably mounted to cover and uncover a first access opening corresponding to the oven or cooking chamber 28, a heat element or heating unit 50 disposed within the cooking chamber or oven 28, an inlet duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28, a return duct 84 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28, a refrigeration module or unit 70 including a compressor 76, a condenser 90, an evaporator 78 mounted inside a housing as shown in Figure 4, with the evaporator housing as mounted thus being at least somewhat inherently thermally insulating with respect to both the condenser 90 and with respect to the base because of the air-filled (and thus inherently insulative) housing surrounding the evaporator. A second access opening through which access to the interior of refrigeration

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module or unit 70 is provided corresponds to the opening in which drawer 68 is disposed, this opening receiving and thus being sized to receive the refrigeration module or unit 70.

The reference thus reads on the claims.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 5 through 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Clark et al.*

As discussed in greater detail above, *Clark et al.* discloses a combination refrigerated oven or range appliance 20, including an inlet duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28 and a return duct 84 extending between the refrigeration module or unit and the cooking chamber or oven 28. However, *Clark et al.* does not specifically disclose the ducts connecting the refrigeration

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module or unit 70 and the oven or cooking chamber 28 as either extending through a peripheral wall of the cooking chamber 28 or as having openings to the cooking chamber 28 which are spaced relative to each other and otherwise located as recited in claims 5 through 15 of the instant invention. Nevertheless, absent a showing of unexpected results therefrom by applicant, shifting location of parts is generally a matter of design choice and thus not inventive. See *In re Japikse*, 86 USPQ 70 (CCPA 1950).

Thus, it would have been obvious to one skilled in the art at the time of invention to modify the combination appliance of *Clark et al.* by, for example, placing the inlet and outlet ducts in a peripheral wall in order to save space and/or in order to be able to circulate cooling air through the cooking chamber or oven 28 in a particular pattern. For example, placing the outlet of the cooling air inlet duct near the top wall of the cooking chamber or oven 28 allows warm air which has risen within the chamber or oven 28 to more readily flow into the inlet duct when the combination appliance is run in a cooling mode.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Clark et al.* in view of *Hirath et al.*

As discussed in greater detail above, *Clark et al.* either discloses or suggests a combination refrigerated oven or range appliance 20 essentially as claimed, including a bottom wall 24 between the top of the refrigeration chamber and the bottom of the cooking chamber [see Figure 5]. While *Clark et al.* does not explicitly disclose the walls between the compartments of the combination appliance nor the walls of the housing of the combination appliance as comprising a layer of insulation sandwiched therebetween, it was previously noted by Official Notice that it is well known in the art of designing

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both cooking ranges/ovens and refrigerators to insulate the walls of the housings of the appliances in order to prevent the exterior of the respective appliances from being either extremely hot or extremely cold to the touch and to maximize the efficiency of the appliances.

In response to applicant's challenge of the Official Notice taken by the examiner, the examiner is providing the Hirath et al. reference as documentary evidence that it is well-known in the art to insulate the housings of both refrigerators and ovens by placing insulation inside the walls of the housings for these types of appliances.

Thus, it would have likewise been obvious to one skilled in the art at the time of invention to modify the combination appliance of *Clark et al* by insulating the walls thereof as taught by Hirath et al. in order to maximize the efficiency of the appliance while also increasing user safety and comfort.

Allowable Subject Matter

11. Claims 12, 13, and 21 through 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references show that it is well-known in the art to insulate the walls of refrigerators and other heating and/or cooling kitchen appliances.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (571) 272-4909.

While she works a flexible schedule that varies from day to day and from week to week,

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Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at (571) 272-4930.

lvc

March 21, 2005



LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3753